109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 109–146

527 FAIRNESS ACT OF 2005

JUNE 22, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1316]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 1316) to amend the Federal Election Campaign Act of 1971 to repeal the limit on the aggregate amount of campaign contributions that may be made by individuals during an election cycle, to repeal the limit on the amount of expenditures political parties may make on behalf of their candidates in general elections for Federal office, to allow State and local parties to make certain expenditures using nonfederal funds, to restore certain rights to exempt organizations under the Internal Revenue Code of 1986, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "527 Fairness Act of 2005".

SEC. 2. REPEAL OF AGGREGATE LIMIT ON CONTRIBUTIONS BY INDIVIDUALS.

(a) REPEAL OF LIMIT.—Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by striking paragraph (3).

(b) CONFORMING AMENDMENTS.—

(1) INDEXING.—Section 315(c) of such Act (2 U.S.C. 441a(c)) is amended by striking "(a)(3)," each place it appears in paragraphs (1)(B)(i), (1)(C), and (2)(B)(ii).

(2) INCREASE IN LIMITS FOR SENATE CANDIDATES FACING WEALTHY OPPONENTS.—Section 315(i)(1)(C) of such Act (2 U.S.C. 441a(i)(1)(C)) is amended—

(A) by amending clause (i) to read as follows:

"(i) 2 times the threshold amount, but not over 4 times that amount, the increased limit shall be 3 times the applicable limit;";

(B) by amending clause (ii) to read as follows:

"(ii) 4 times the threshold amount, but not over 10 times that amount, the increased limit shall be 6 times the applicable limit; and"; and

(C) in clause (iii)—

(i) by adding "and" at the end of subclause (I),

(ii) by striking subclause (II), and

(iii) by redesignating subclause (III) as subclause (II).

(3) INCREASE IN LIMITS FOR HOUSE CANDIDATES FACING WEALTHY OPPONENTS.—Section 315A(a)(1) of such Act (2 U.S.C. 441a—1(a)(1)) is amended—

(A) by adding "and" at the end of subparagraph (A);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B).

SEC. 3. REPEAL OF LIMIT ON AMOUNT OF PARTY EXPENDITURES ON BEHALF OF CANDIDATES IN GENERAL ELECTIONS.

(a) REPEAL OF LIMIT.—Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended—

(1) in paragraph (1)—

(A) by striking "(1) Notwithstanding" and inserting "Notwithstanding",

(B) by striking "expenditures or limitations on" and inserting "amounts of expenditures or", and

(C) by striking "Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection" and inserting "Federal office in any amount"; and

(2) by striking paragraphs (2), (3), and (4).

(b) CONFORMING AMENDMENTS.—

(1) INDEXING.—Section 315(c) of such Act (2 U.S.C. 441a(c)) is amended—

(A) in paragraph (1)(B)(i), by striking "(d),"; and

(B) in paragraph (2)(B)(i), by striking "subsections (b) and (d)" and inserting "subsection (b)".

(2) INCREASE IN LIMITS FOR SENATE CANDIDATES FACING WEALTHY OPPONENTS.—Section 315(i) of such Act (2 U.S.C. 441a(i)(1)) is amended—

(A) in paragraph (1)(C), as amended by section 2(b)(2)(C), by amending clause (iii) to read as follows:

"(iii) 10 times the threshold amount, the increased limit shall be 6 times the applicable limit.";

(B) in paragraph (2)(A) in the matter preceding clause (i), by striking ", and a party committee shall not make any expenditure,";

(C) in paragraph (2)(A)(ii), by striking "and party expenditures previously made"; and

(D) in paragraph (2)(B), by striking "and a party shall not make any expenditure".

(3) INCREASE IN LIMITS FOR HOUSE CANDIDATES FACING WEALTHY OPPONENTS.—Section 315A(a) of such Act (2 U.S.C. 441a—1(a)) is amended—

(A) in paragraph (1), as amended by section 2(b)(3), by striking "exceeds $350,000—" and all that follows and inserting the following: "exceeds $350,000, the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled.";

(B) in paragraph (3)(A) in the matter preceding clause (i), by striking ", and a party committee shall not make any expenditure,";

(C) in paragraph (3)(A)(ii), by striking "and party expenditures previously made"; and

(D) in paragraph (3)(B), by striking "and a party shall not make any expenditure".

SEC. 4. INCREASE IN CONTRIBUTION LIMITS FOR POLITICAL COMMITTEES.

(a) CONTRIBUTIONS TO POLITICAL COMMITTEES.—Section 315(a)(1)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)(C)) is amended by striking "$5,000" and inserting "$7,500".

(b) CONTRIBUTIONS MADE BY MULTICANDIDATE COMMITTEES.—Section 315(a)(2) of such Act (2 U.S.C. 441a(a)(2)) is amended—

(1) in subparagraph (A), by striking "$5,000" and inserting "$7,500";

(2) in subparagraph (B), by striking "$15,000" and inserting "$25,000"; and

(3) in subparagraph (C), by striking "$5,000" and inserting "$7,500".

SEC. 5. INDEXING OF ALL CONTRIBUTION LIMITS.

(a) IN GENERAL.—Section 315(c)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)(1)(B)) is amended to read as follows:

"(B) Except as provided in subparagraph (C)—

"(i) in any calendar year after 2002—

"(I) a limitation established by subsection (a)(1)(A), (a)(1)(B), (b), or (h) shall be increased by the percent difference under subparagraph (A),

"(II) each amount so increased shall remain in effect for the calendar year, and

"(III) if any amount after the adjustment made under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100; and

"(ii) in any calendar year after 2006—

"(I) a limitation established by subsection (a)(1)(C), (a)(1)(D), or (a)(2) shall be increased by the percent difference under subparagraph (A),

"(II) each amount so increased shall remain in effect for the calendar year, and

"(III) if any amount after the adjustment made under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.".

(b) PERIOD OF INCREASE.—Section 315(c)(1)(C) of such Act (2 U.S.C. 441a(c)(1)(C)), as amended by section 2(b)(1), is amended by striking "subsections (a)(1)(A), (a)(1)(B), and (h)" and inserting "subsections (a) and (h)".

(c) DETERMINATION OF BASE YEAR.—Section 315(c)(2)(B) of such Act (2 U.S.C. 441a(c)(2)(B)) is amended—

(1) by striking "and" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(iii) for purposes of subsections (a)(1)(C), (a)(1)(D), and (a)(2), calendar year 2005.".

SEC. 6. PERMITTING TRANSFERS BETWEEN LEADERSHIP COMMITTEES AND NATIONAL PARTY COMMITTEES.

Section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)) is amended—

(1) by striking "(4)" and inserting "(4)(A)"; and

(2) by adding at the end the following new subparagraph:

"(B) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between a leadership committee of an individual holding Federal office and political committees established and maintained by a national political party. For purposes of the previous sentence, the term 'leadership committee' means, with respect to an individual holding Federal office, an unauthorized political committee which is associated with such individual but which is not affiliated with any authorized committee of such individual.".

SEC. 7. INCREASE IN THRESHOLD OF CONTRIBUTIONS AND EXPENDITURES REQUIRED FOR DETERMINING TREATMENT AS POLITICAL COMMITTEE.

(a) IN GENERAL.—Section 301(4)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(A)) is amended by striking "$1,000" each place it appears and inserting "$10,000".

(b) LOCAL POLITICAL PARTY COMMITTEES.—

(1) CONTRIBUTIONS RECEIVED.—Section 301(4)(C) of such Act (2 U.S.C. 431(4)(C)) is amended by striking "$5,000" each place it appears and inserting "$10,000".

(2) CONTRIBUTIONS OR EXPENDITURES MADE.—Section 301(4)(C) of such Act (2 U.S.C. 431(4)(C)) is amended by striking "$1,000" each place it appears and inserting "$10,000".

SEC. 8. PROHIBITING CONTRIBUTIONS AND DONATIONS TO SECTION 527 ORGANIZATIONS BY FOREIGN NATIONALS.

(a) IN GENERAL.—Section 319(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) a contribution or donation to an organization described in section 527 of the Internal Revenue Code of 1986; or".

(b) CONFORMING AMENDMENT REGARDING SOLICITATION OF FUNDS.—Section 319(a)(2) of such Act (2 U.S.C. 441e(a)(2)) is amended by striking "(A) or (B)" and inserting "(A), (B), or (C)".

SEC. 9. REQUIRING SECTION 527 ORGANIZATIONS TO SUBMIT REPORTS UNDER FEDERAL ELECTION CAMPAIGN ACT OF 1971.

Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following new paragraph:

"(13)(A) Except as provided in subparagraph (B), each organization described in section 527 of the Internal Revenue Code of 1986 shall submit a report under this section in the same manner, under the same terms and conditions, and at the same times applicable to a political committee which is not an authorized committee of a candidate or a national committee of a political party.

"(B) Subparagraph (A) does not apply to an organization described in section 527(j)(5)(B) of the Internal Revenue Code of 1986 (relating to a State or local committee of a political party or political committee of a State or local candidate).".

SEC. 10. PERMITTING EXPENDITURES FOR ELECTIONEERING COMMUNICATIONS BY CERTAIN ORGANIZATIONS.

(a) PERMITTING ORGANIZATIONS TO MAKE EXPENDITURES FOR CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.—Section 316(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(c)) is amended by striking paragraph (6).

(b) EXPANDING TYPES OF ORGANIZATIONS ELIGIBLE TO MAKE EXPENDITURES.—

(1) IN GENERAL.—Section 316(c) of such Act (2 U.S.C. 441b(c)) is amended by striking "section 501(c)(4) organization" each place it appears in paragraphs (2), (3)(B), and (4)(A) (in the matter preceding clause (i)) and inserting "section 501(c)(4), (5), or (6) organization".

(2) DEFINITION.—Section 316(c)(4)(A)(i) of such Act (2 U.S.C. 441b(c)(4)(A)(i)) is amended by striking "section 501(c)(4) of the Internal Revenue Code of 1986" and inserting "paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986".

(c) CLARIFICATION OF EFFECT ON TAX TREATMENT OF EXPENDITURES.—Section 316(c)(5) of such Act (2 U.S.C. 441b(c)(5)) is amended by striking the period at the end and inserting the following: ", or to affect the treatment under such Code of any expenditures described in section 527(e) of such Code which are made by a section 501(c)(4), (5), or (6) organization.".

SEC. 11. EXPANDING ABILITY OF CORPORATIONS AND LABOR ORGANIZATIONS TO COMMUNICATE WITH MEMBERS.

(a) TYPES OF COMMUNICATIONS PERMITTED.—Section 316(b)(4)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(B)) is amended by striking "only by mail addressed" and inserting "only by communications addressed or otherwise delivered".

(b) SOLICITATIONS BY TRADE ASSOCIATIONS.—Section 316(b)(4)(D) of such Act (2 U.S.C. 441b(b)(4)(D)) is amended by striking "to the extent that" and all that follows and inserting a period.

SEC. 12. PERMITTING STATE AND LOCAL POLITICAL PARTIES TO USE NONFEDERAL FUNDS FOR VOTER REGISTRATION AND SAMPLE BALLOTS.

(a) IN GENERAL.—Section 301(20) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(20)) is amended—

(1) in subparagraph (A), by striking clause (i) and redesignating clauses (ii) through (iv) as clauses (i) through (iii); and

(2) in subparagraph (B)—

(A) in clause (i), by striking "subparagraph (A)(i) or (ii)" and inserting "subparagraph (A)(i)";

(B) by striking "and" at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting a semicolon; and

(D) by adding at the end the following new clauses:

"(v) voter registration activities; and

"(vi) the costs incurred with the preparation of a sample ballot for an election in which a candidate for Federal office and a candidate for State or local office appears on the ballot.".

(b) CONFORMING AMENDMENTS.—(1) Section 304(f)(3)(B)(iv) of such Act (2 U.S.C. 434(f)(3)(B)(iv)) is amended by striking "section 301(20)(A)(iii)" and inserting "section 301(20)(A)(ii)".

(2) Section 323 of such Act (2 U.S.C. 441i) is amended—

(A) in subsection (b)(2)(A), by striking "clause (i) or (ii)" and inserting "clause (i)";

(B) in subsection (e)(4), by striking "clauses (i) and (ii)" each place it appears in subparagraphs (A) and (B) and inserting "clause (i)"; and

(C) in subsection (f)(1), by striking "section 301(20)(A)(iii)" and inserting "section 301(20)(A)(ii)".

SEC. 13. CLARIFICATION OF AUTHORIZATION OF FEDERAL CANDIDATES AND OFFICEHOLDERS TO ATTEND FUNDRAISING EVENTS FOR STATE OR LOCAL POLITICAL PARTIES.

Section 323(e)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441i(e)(3)) is amended by striking "speak," and inserting "speak without restriction or regulation,".

SEC. 14. MODIFICATION OF DEFINITION OF PUBLIC COMMUNICATION.

(a) IN GENERAL.—Section 301(22) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) is amended by adding at the end the following new sentence: "Such term shall not include communications over the Internet.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 15. TREATMENT OF CANDIDATE COMMUNICATIONS CONTAINING ENDORSEMENT BY FEDERAL CANDIDATE OR OFFICEHOLDER.

(a) IN GENERAL.—Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end the following new paragraph:

"(9)(A) For purposes of paragraph (7)(C), a disbursement for an electioneering communication which refers to a candidate for Federal office shall not be treated as a disbursement which is coordinated with such candidate solely on the ground that the communication contains a State or local endorsement or (in the case of a communication containing a State or local endorsement) that the candidate reviewed, approved, or otherwise participated in the preparation and dissemination of the communication.

"(B) In subparagraph (A), the term 'State or local endorsement' means, with respect to a candidate for Federal office—

"(i) an endorsement by such candidate of a candidate for State or local office or of another candidate for Federal office; or

"(ii) a statement of the position of such candidate on a State or local ballot initiative or referendum.".

(b) CONFORMING AMENDMENT.—Section 315(a)(7)(C)(ii) of such Act (2 U.S.C. 441a(a)(7)(C)(ii)) is amended by striking "such disbursement" and inserting "subject to paragraph (9), such disbursement".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to elections occurring on or after the date of the enactment of this Act.

SEC. 16. SEVERABILITY.

If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.

SEC. 17. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this Act shall take effect January 1, 2006.

PURPOSE OF THE LEGISLATION

The Bipartisan Campaign Reform Act of 2002 ("BCRA") threw our federal campaign finance system out of balance when it passed three years ago. The law's proponents claimed that BCRA would ban soft money, but it didn't. Rather, it merely diverted the flow of soft money. In the process, power and influence were shifted away from our political parties and towards less accountable, ideologically driven Section 527 organizations and other outside groups. Furthermore, BCRA's tangled web of onerous restrictions and harsh criminal penalties significantly impeded the ability of citizens and associations to exercise their First Amendment rights. Rather than add to the labyrinthine set of rules and regulations already on the books, the Committee opts to take a different, more productive approach.

The purpose of H.R. 1316, the 527 Fairness Act of 2005, as amended, is to restore some of the balance that was lost when BCRA was enacted. H.R. 1316, co-authored by Representatives Mike Pence (R–IN) and Albert Wynn (D–MD), accomplishes this

objective not by tearing down 527 organizations but by lifting up party committees, political action committees ("PACs"), and individuals so that they can compete on a more level playing field with 527 organizations. Currently, 527 organizations are able to fund their political activities with unlimited "soft money" contributions from labor unions, corporations, and wealthy individuals. And there are already reports that 527 organizations may "have a bigger impact on the [2006] midterm elections than they had on last year's presidential race because . . . their spending would make up a greater percentage of total political spending."[1] Thus, it is essential that the other entities involved in our campaign system—namely, parties, candidates, committees, and citizens—be able to raise the hard money resources they need to stay afloat in a political environment flooded by 527 soft money. And it is equally important that the American public receive full and timely disclosure regarding the individuals and groups that are financing the 527 organizations.

When the Supreme Court upheld the constitutionality of most of BCRA's provisions in *McConnell* v. *FEC*, it found that Congress "enjoys particular expertise" with respect to campaign finance regulation that warrants "proper deference."[2] So, although the constitutional questions regarding BCRA have been largely resolved, at least for the moment, Congress has an ongoing responsibility to use its expertise to evaluate the efficacy of the nation's election laws and to make modifications as necessary to improve the functioning of our campaign finance system. In the Committee's estimation, H.R. 1316 is necessary to correct the deficiencies in BCRA and to ameliorate the negative consequences that arose in the wake of its passage.

Even before BCRA was passed, several Members predicted that, contrary to the assertions of its supporters, BCRA would do nothing to stem the tide of soft money. For instance, Chairman Ney flatly stated on the House Floor that BCRA "does not ban soft money under any definition or under any stretch of the imagination."[3] Similarly, Senator Mitch McConnell said at the time that "under this bill, I promise you, if [BCRA] becomes law, there won't be one penny less spent on politics—not a penny less. In fact, a good deal more will be spent on politics."[4] So, an explosion of soft money spending by 527 organizations during the 2004 election was by no means unanticipated.

True to the predictions of these Members, as soon as BCRA went into effect, plans were being hatched to steer soft money—which party committees had previously been able to accept but could no longer—towards 527 groups. Though 527s are legally prohibited from expressly advocating the election or defeat of a federal candidate, several sprung up that were unabashed in stating that their mission was to defeat President George W. Bush in the 2004 presidential election.[5] The most generous contributor to anti-Bush

[1] Alexander Bolton, ACT to Spend $30 Million, The Hill, Jun. 14, 2005, at 1.
[2] 540 U.S. 93, 95 (2003).
[3] 148 Cong. Rec. H339 (daily ed. Feb. 13, 2002).
[4] 147 Cong. Rec. S3105 (daily ed. Mar. 29, 2001).
[5] To be sure, there were 527 groups in the 2004 election cycle that were Republican-leaning. However, the overwhelming majority of soft money raised and spent during the most recent election was by anti-Bush 527s. Studies indicate that Democrat-leaning 527s outraised and outspent Republican-leaning 527s by about a margin of four-to-one. See Steve Weissman & Ruth Hassan,

527s was billionaire George Soros, who donated over $27 million to these groups.[6] In the year leading up to the 2004 presidential race, Mr. Soros stated that "defeating President Bush" was "the central focus of my life" and "a matter of life and death," and that he was "willing to put my money where my mouth is."[7] As documented by the Washington Post,

> [Mr. Soros's] campaign began last summer with the help of Morton H. Halperin, a liberal think tank veteran. Soros invited Democratic strategists to his house in Southampton, Long Island, including Clinton chief of staff John D. Podesta, Jeremy Rosner, Robert Boorstin and Carl Pope.
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> They discussed the coming election. Standing on the back deck, the evening sun angling into their eyes, Soros took aside Steve Rosenthal, CEO of the liberal activist group America Coming Together (ACT), and Ellen Malcolm, its president. They were proposing to mobilize voters in 17 battleground states. Soros told them he would give ACT $10 million . . .
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> Before coffee the next morning, his friend Peter Lewis, chairman of the Progressive Corp., had pledged $10 million to ACT. Rob Glaser, founder and CEO of RealNetworks, promised $2 million. Rob McKay, president of the McKay Family Foundation, gave $1 million and benefactors Lewis and Dorothy Cullman committed $500,000.[8]

According to the Political Money Line, 527 groups expended nearly $600 million during the 2004 election cycle.[9] A number of these organizations functioned as "shadow" political party committees that, with the apparent stamp of approval of the relevant federal officeholders and party officials, solicited and spent soft money in support of the party's candidates and agenda and took over, to a large extent, traditional party functions, such as voter registration and get-out-the-vote activities.[10]

Proponents of BCRA now argue that the new law's effectiveness should be judged not by whether soft money still thrives but by whether it has succeeded in severing the link between federal elected officials and soft money. And on this ground, BCRA's supporters declare that the new law is a rousing success. While it may be true that federal officeholders and candidates are no longer directly soliciting soft money, it would be inaccurate to state that the link between soft money organizations and federal officeholders, candidates, and top party officials has been completely severed.

During the 2004 election cycle, there were numerous connections between top party officials and major 527 groups, and there was

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BCRA and the 527 Groups, Campaign Fin. Inst. Report, Table A–2, available at *http://www.cfinst.org/studies/ElectionAfterReform/pdf/EAR_*527Chapter.pdf.

[6] See Large 527 Donors for Election Cycle 2004, Political Money Line, available at *http://www.fecinfo.com/cgi-win/irs_*ef_top.exe?DoFn=DONOR&sYR=2004.

[7] Laura Blumenfeld, Soros's Deep Pockets vs. Bush; Financier Contributes $5 Million More in Effort to Oust President, Wash. Post, Nov. 11, 2003, at A03.

[8] Id. The entire article will be included in the appendix to this report.

[9] *http://www.fecinfo.com/cgi-win/irs_*ef_527.exe?DoFn=&sYR=2004.

[10] ACT President Ellen Malcolm stated: "We have to find ways to come together to do lots of the pieces of the presidential campaign, because the party will not have the soft money to use. We on the Democratic side are looking for effective ways to do the work of delivering the message and getting out the vote that used to be done by the party." Julie Kosterlitz, On the Ropes? 35 Nat'l J., Sept. 6, 2003, at 36.

also steady movement between political campaigns and 527s. For instance, Harold Ickes, former top advisor to President Bill Clinton, functioned as both a member of the Executive Committee of the Democratic National Committee (DNC) while also serving as President of the Media Fund—a 527 dedicated to running anti-Bush and pro-Democrat ads—and Chief of Staff to ACT, which focused on getting out the Democratic vote.[11] The dual and often interrelated roles played by Mr. Ickes were on full display during the 2004 Democratic National Convention in Boston. According to an article by the New York Times, Mr. Ickes "court[ed] some the Democrats' wealthiest donors here at the Four Seasons" during the day, soliciting them for contributions to the Media Fund, and "[t]hen, in the evenings, this onetime White House deputy chief of staff throws on his credentials as a Democratic Party superdelegate and joins party functionaries gathered for the Democratic convention at the FleetCenter as one of their own." [12] The article continued:

> The scene at the Four Seasons this week has shown just how close to the line of independence groups like The Media Fund—which has been running advertisements against President Bush since March—can come.
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> Just down the hallway from Mr. Ickes's second-floor suite in the Wendell Phillips Room is the registration office in the Winthrop Room, where fund-raisers pick up their special-access passes. As Mr. Ickes mingled with passers-by outside of his suite Wednesday afternoon, a parade of campaign and party officials walked by, including Bob Shrum, Mr. Kerry's chief strategist. Mr. Shrum and Mr. Ickes have worked on campaigns together like the David N. Dinkins New York mayoral campaigns of 1989 and 1993.
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> Mr. [Erik] Smith [Executive Director of the Media Fund] was also right near longtime comrades-in-arms. While Mr. Smith sat at a table in the Four Seasons lounge speaking with a reporter on Tuesday, Steve Elmendorf, Mr. Kerry's deputy campaign manager, who is staying at a nearby hotel, passed by the window. Mr. Elmendorf was a senior adviser for the presidential campaign of Representative Richard A. Gephardt of Missouri last fall when Mr. Smith was its press secretary.
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> The proximity is hardly by chance. The hotel is not just the base of operation for Mr. Smith, Mr. Ickes and yet another group for which Mr. Ickes is raising money, America Coming Together, but has also become a salon for top fund-raisers in the Kerry campaign and the Democratic Party. . . .
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> But the intermingling of the avowed independent groups and Democratic officials is not restricted to the Four Seasons here. Environment 2004, an organization that runs a 527 committee held a reception to thank donors on Monday at the Beacon Hill home of Cathy Douglas Stone, a Boston environmental activist. Among those who spoke

[11] Jim Drinkard, "Outside" Political Groups Full of Party Insiders, USA TODAY, Jun. 28, 2004, at 7A.

[12] Jim Rutenberg & Glen Justice, A Delegate, a Fund-Raiser, and a Very Fine Line, N.Y. Times, Jul. 29, 2004, at A1.

were the columnist Arianna Huffington, the singer Carole King and Senator Maria Cantwell of Washington.

On Monday Ms. Malcolm was on hand at an event honoring Representative Nancy Pelosi of California, the House minority leader, that drew dozens of lawmakers and major donors together to drink lemonade and iced tea in a garden atrium of the Isabella Stewart Gardner museum. Later that night, Ms. Malcolm, like Mr. Ickes, was on the convention floor.

And Mr. Ickes is not the only official of a 527 group with delegate status. Simon Rosenberg, head of the New Democrat Network, a group running Spanish-language advertisements against Mr. Bush since March, said he sits on the convention's platform committee.[13]

Other examples of top party officials who also played formal roles in the operation of 527 groups included New Mexico Governor Bill Richardson, who simultaneously served as Convention Chair of the DNC Convention and as the Vice Chair of Voice for Working Families, a Democrat-leaning 527 group that spent over $7 million in 2004. And Jim Jordan went from being John Kerry's campaign manager to serving as spokesperson for the Media Fund and representing that group as well as ACT and America Votes.

As for the flow of personnel from 527 groups to political campaigns, Zach Exley transitioned from Director of Special Projects for MoveOn.org to become the Director of Online Communications and Organization for John Kerry's presidential campaign. Similarly, Bill Knapp first served as an ad consultant to the Media Fund before being hired by the Kerry campaign. Whether any of the arrangements listed above constituted illegal coordination in violation of federal campaign finance law, the Committee offers no opinion. However, these interactions do demonstrate that BCRA's wall separating federal officeholders, candidates, and party officials from the influence of soft money is unquestionably porous.

In the aftermath of the 2004 election, the interrelations between the 527s and Democrat lawmakers and party officials has only grown. House Democratic Leader Nancy Pelosi acknowledges that she "or her staff have calls and meetings 'on a weekly basis' with representatives of MoveOn"[14]—one of the most active Democrat-leaning 527s during the most recent election cycle, and a group to which George Soros gave $2.5 million.[15] The DNC has praised MoveOn for its efforts, stating that "[o]bviously they are relaying the Democratic Party message."[16] And in an e-mail sent out earlier this year to MoveOn supporters, Eli Pariser, the executive director of the organization, brazenly announced that the Democratic Party is now "our party: We bought it, we own it and we're going to take it back."[17] Thus, the prediction by BCRA's supporters that soft money would be purged from the federal electoral process and that the overall impact of money on politics would be lessened has been proven false.

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[13] Id. The entire article will be included in the appendix to this report.

[14] Chris Cillizza, MoveOn Goes Mainstream, Roll Call, Apr. 13, 2005.

[15] See Political Money Line, 527 Donor: George Soros, available at *http://www.fecinfo.com/cgi-win/irs_ef_inter.exe?DoFn=&sText=44919&sYR=2004.*

[16] Cillizza, supra note 11.

[17] Id.

Those who allege that the continuing presence of soft money in the federal electoral process is the fault of the FEC are being disingenuous. For it was not only the opponents of BCRA who pointed out that the law would not eliminate soft money but merely redirect it to less accountable channels; the reformers themselves acknowledged that soft money would still play a role through its use by independent groups. For instance, Senator Jim Jeffords, the author of a prominent section of BCRA, stated flatly during the Senate debate that BCRA "will not prohibit groups like the National Right to Life Committee or the Sierra Club from disseminating electioneering communications; It will not prohibit such groups from accepting corporate or labor funds; It will not require such groups to create a PAC or another separate entity."[18] Likewise, Senator Olympia Snowe averred that "[w]e are not saying they can't run ads. They can run ads all year long. They can do whatever they want in that sense. But what we are saying is, when they come into that narrow window, we have the right to know who are their major contributors who are financing those ads close to an election."[19]

BCRA has also had a harmful effect on the political parties in this country. The reformers respond to this charge by claiming that the fundraising for the national parties during the 2004 election cycle is going better than ever. However, this provides a very incomplete picture of the overall health of the nation's party structure. As is typical of the reform crowd, they focus exclusively on what is happening at the federal level and basically view state and local parties as nothing more than vehicles used by the national parties to circumvent the federal campaign finance laws. A closer look at the operations of state and local parties, though, reveals a troubling situation.

A recent report by the Center for Public Integrity shows that "[c]ampaign finance reform took a bite out of the bottom line for state parties in 2004." The report concludes that "[t]he downturn is largely attributable to the Bipartisan Campaign Reform Act." The report notes that "state parties drastically reduced their investment in political advertising after the McCain-Feingold legislation eliminated transfers of soft money from the national committees to their state affiliates." The result was a drop of 74 percent in advertising. However, the report found that despite the drastic decline in state party advertising, BCRA did not result in less money being spent on political ads, primarily because "media buys of 527 and 501(c)(4) non-profit organizations . . . made up the difference."[20] So again, it is clearly demonstrated that BCRA did not reduce the amount of soft money in politics; it just steered soft money to entities that are unaccountable to the electorate.

Comments recently submitted to the Federal Election Commission by Mark Brewer, the President of the Association of State Democratic Chairs, clearly and alarmingly demonstrate the difficulties that state and local parties face in a post-BCRA world. Mr. Brewer notes: "State and local party committees operate in a very

[18] 147 Cong. Rec. S2812–13 (Mar. 23, 2001).
[19] Id. at S3012 (Mar. 28, 2001).
[20] Agustin Armendariz & Aron Pilhofer, McCain-Feingold Changes State Party Spending, May, 26, 2005, available at *http://www.publicintegrity.com / partylines/report.aspx?aid=690&sid=300.*

complex regulatory environment. No other political committees are asked to manage such Byzantine rules." He goes on to say: "An unfortunate consequence of BCRA is that many state and local party committees are avoiding participating in grassroots political activity because federal law poses compliance challenges that are beyond their ability to meet." He further states that BCRA's restrictions have left many party committees, "particularly [those] at the local level and in states that [are] not Presidential targets," unable to raise "sufficient federal funds to pay for voter registration, voter identification and get-out-the-vote programs . . . Instead of running the risk of violating federal law, many committees simply [do] not engage in federal election activity." Mr. Brewer rues the fact that burdensome regulations are "accelerat[ing] the flow of [GOTV] activities out of the party into less accountable political organizations." Mr. Brewer pungently concludes his comments with the following remarks:

> The Commission's regulations should reflect what state and local committees actually do, rather than unfounded fears of wholesale circumvention of the law. Facts rather than wildly imagined corruptive schemes should guide the Commission. Visit a few local party committees and any fears will be allayed. Add to the complexity of the regulation and there will be fewer to visit.[21]

As the above clearly demonstrates, state and local parties are starved of resources and being suffocated by excessive regulation, largely due to BCRA. This is not good for our democracy. The political parties play a crucial role as mediating institutions within our political system. The health of our democracy is inseparably linked to the health of our political parties. Consequently, changes need to be made to ensure the continuing viability of our party structure at all levels: federal, state, and local.

It is useful to examine what other promises were made by BCRA's supporters and compare them against the actual results. BCRA's supporters asserted that the new law would result in fewer negative advertisements being broadcast during the course of campaigns and, thus, usher in a new era of more honest, less negative politics.[22] But if anything, BCRA's passage has actually led to an

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[21] Comments of Mark Brewer on Proposed Regulations Defining Federal Election Activity and on the Proposed Regulation Governing Allocation of Salaries by State and Local Party Committees, submitted to the Federal Election Commission, available at *http://www.fec.gov/pdf/nprm/fea__definition/comm__03.pdf*. The entire comments will be included in the appendix to this report.

[22] "Q. [Business Week]: Will elections be cleaner this year because of McCain-Feingold reforms?

"A. [Senator McCain]: They're cleaner, and here's why: Sixty days prior to the election, you will not see the flood of [negative] advertising you saw before. And I approve of the 'stand by your ad' clause. It has dramatically reduced the number of attack ads." McCain: The FEC is a "Total Disgrace," Bus. Wk. Online, Jun. 14, 2004, available at *http://www.businessweek.com/magazine/content/04__24/b3887079.htm*.

See also, 148 Cong. Rec. 2117 (daily ed. Mar. 20, 2002)(statement of Sen. Cantwell)(asserting that BCRA "is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airwaves); 147 Cong. Rec. 2692 (daily ed. Mar. 22, 2001) (statement of Sen. Wyden)(claiming that BCRA's "stand-by-your-ad" provisions "will help slow the explosive growth of negative political commercials that are corroding the faith of individuals in the political process).

increase in negative, scorched-earth politicking.[23] The reason for this is two-fold:

1. Money is being diverted away from the political parties—which, as broad-based organizations, must moderate their messages to appeal to the largest audience possible—and is instead being given to single-issue ideological groups whose stances are often dogmatic, whose communication strategies are often hard-edged, and who aren't accountable to the voters; and

2. It is now an almost universal political tactic for candidates and groups to file complaints against their opponents alleging violations of a vague, complex, and difficult-to-understand campaign finance law. Thus, these laws encourage political actors to not only attack the policy positions of their opponents but to tar them as lawbreakers as well.

In this way, BCRA has contributed to a more negative, and often poisonous, political environment.[24]

The reformers also argued that, upon BCRA's passage, public cynicism about the political process would abate because elections would now be free from the taint of soft money and the appearance of improper influence.[25] Actually, it is more likely that the American people become more cynical when they are told that a law will rid the political system of soft money, see that it does not, and then have to listen to the advocates of the law crow about what a success it is. And one becomes even more incredulous upon learning that the same groups that continually rail against the supposedly corrupting effects of soft money themselves have no compunctions about taking approximately $140 million in soft money as part of a manufactured effort by a handful of liberal foundations to create the false impression that a mass grassroots movement was demanding campaign finance reform.[26]

Finally, we were told that BCRA would enable the average person to have a greater influence on the political process. However, that's not how things have turned out. BCRA's complexities and ambiguities, combined with its harsh penalties, have increasingly made the federal political process the exclusive province of the rich, the sophisticated, and the well-connected. And it is now becoming unclear whether the Internet, which has been a revolutionary tool for engaging the American citizenry in the democratic process, will remain a dynamic, unfettered, and accessible medium for exchanging political ideas if we do not act to prevent the heavy hand of

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[23] "[T]he 2004 election cycle . . . has evolved into one of the most relentlessly negative political campaigns in memory, as attacks on a candidate's character, patriotism and fitness for office, which once seemed out of bounds, have become routine. More ads than ever focused on discrediting an opponent rather than promoting a candidate, independent analysts said. . . .

"Part of the negative tenor of the 2004 campaign can be traced to the proliferation of independent political groups known as 527s, named for the tax-code section that governs them." Janet Hook, Campaigns Accentuate the Negative, L.A. Times, Oct. 17, 2004, at A1.

[24] "[I]t doesn't take a genius to realize that campaign finance reform makes it easier and more convenient for both sides to run nasty advertising while avoiding any accountability for toxic messages. . . . Far from banishing money from politics, McCain-Feingold has merely moved it out of the major parties and into the political shadows, where it is less accountable. John Fund, Why We're Refighting Vietnam: Blame McCain-Feingold, Wall St. J.

[25] See, e.g., 148 Cong. Rec. 1996 (daily ed. Mar. 18, 2002)(statement of Sen. Dodd)("[A]dopting this moderate legislation [ ] restores the proper balance of money to politics and restores the American people's confidence in our current financing system.").

[26] See Political Money Line, Campaign Finance Reform Lobby: 1994–2004, available at *http://www.fecinfo.com/cgi-win/cfg*__summary.exe?DoFn=; see also Ryan Sager, Buying "Reform, N.Y. Post, Mar. 17, 2005, at 33 ("Campaign-Finance reform has been an immense scam perpetrated on the American people by a cadre of left-wing foundations and disguised as a 'mass movement.'").

government from imposing burdensome regulations governing online political speech. Thus, BCRA was supposed to enhance the voice of the average citizen, but instead, it has increasingly frozen out the average citizen from the political process.

In his dissent in the *McConnell* case, Justice Clarence Thomas remarked about the self-perpetuating nature of campaign finance regulation: "Every law has limits, and there will always be behavior not covered by the law but at its edges; behavior easily characterized as 'circumventing' the law's prohibition. Hence, speech regulation will again expand to cover new forms of 'circumvention,' only to spur supposed circumvention of the new regulations, and so forth. [This then turns into a] never-ending and self-justifying process."[27] The clamor of the reformers for additional legislation to plug existing "loopholes" in BCRA provides further evidence of Justice Thomas's main point: regulation begets further regulation. Instead of blindly going down the path of more and more regulation, much of which is counterproductive, H.R. 1316 seeks to—in the words of its co-author, Congressman Pence—"inject[ ] more freedom into the campaign system."

H.R. 1316 strengthens our political parties by removing unnecessary regulatory obstacles that hinder the parties' ability to raise money and communicate with their candidates and also buttresses the ability of state and local parties to engage in traditional party functions, like voter registration and distributing sample ballots. It updates and indexes outdated limits. It sheds more sunlight on the activities of 527 groups, ensures that foreign nationals cannot influence American elections through contributions to such groups, and enables non-profit organizations to broadcast electioneering communications on equal terms with 527s. It protects the ability of our citizens to participate in the national political dialogue using Internet web sites and blogs without fear of being subject to complex regulation. And it bolsters the First Amendment rights of federal officeholders and candidates to fully participate in elections in their home states and in the communities they represent.

It is also important to note what H.R. 1316 does not do. It does not repeal the soft money ban in BCRA. It does not lift the prohibition on federal officeholders and candidates soliciting soft money. And it does not repeal the individual limits on contributions to candidates, parties, and PACs. Thus, H.R. 1316 is a narrowly tailored bill designed to correct current deficiencies and distortions in our nation's campaign finance system and to make it fairer and more balanced for everyone.

SUMMARY OF THE LEGISLATION

Section 1.—Short Title: The "527 Fairness Act of 2005."

Section 2.—Repeal of Aggregate Limit on Contributions by Individuals.

- Repeals the limit on the total amount of contributions that an individual may give to candidates and committees during an election cycle.

Under current law, an individual is subject to a $101,400 aggregate contribution limit during a two-year election cycle. This aggregate limit forces national, state, and local party committees and

[27] *McConnell,* 540 U.S. at 268–69.

PACs to compete against each one another for a donor's dollars, since an individual is prohibited from giving a maximum contribution to each group. This competition has been especially harmful to state and local parties.

The removal of the ceiling on total contributions will encourage more giving to party committees, candidates, and other groups subject to disclosure and contribution limits and less to unaccountable outside groups. In addition, the unproductive competition among party committees and PACs will cease.

Note: this provision affects only the aggregate contribution limit and does not repeal the limits on what a person may give to any one candidate or committee.

Section 3.—Repeal of Limit on Amount of Party Expenditures on Behalf of Candidates in General Elections.

- Repeals the limit on expenditures coordinated between party committees and their candidates.

Political parties are currently able to make unlimited independent expenditures on behalf of their Senate and House candidate but are limited in the amount of coordinated expenditures they may make. This disparity is premised on the untenable notion that candidates are potentially in danger of being corrupted by their own parties. As FEC Commissioner Michael Toner has pointed out, "These Draconian party spending limits are an anachronism and serve no legislative purpose. . . . Given that every single dollar that a political party wishes to spend on coordinated expenditures must be made out of hard money, there is no anti-corruption rationale for continuing to limit these party expenditures."[28] Therefore, this provision removes the wedge that's been driven between parties and their own candidates.

Section 4.—Increase in Contribution Limits for Political Committees.

- Increases the limit on contributions made to or by PACs from $5,000 to $7,500.
- Increases the limit on PAC contributions to national party committees from $15,000 to $25,000, thus putting PACs on equal footing with individuals.

The PAC contribution limits have not been raised since 1974; consequently, their value has been eroded by inflation. In fact, had the PAC limit set in 1974 been indexed for inflation, the current limit would be $19,716.[29] Therefore, the PAC contribution limits are long overdue for this very modest increase.

Section 5.—Indexing of All Contribution Limits.

- Indexes the contribution limits for PACs.
- Indexes the contribution limits for state party committees.

BCRA permits the indexing of some contribution limits for inflation but inexplicably leaves other limits unindexed. This provision will ensure that all contribution limits are periodically adjusted to account for inflation.

Section 6.—Permitting Transfers between Leadership Committees and National Party Committees.

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[28] Michael E. Toner, Pass Pence-Wynn So We Can Fix Coordinated Expenditures, Roll Call, Jun. 15, 2005, at 4.

[29] This figure was reached using the inflation calendar available on web site for the Department of Labor's Bureau of Labor Statistics < *http://www.bls.gov/cpi/home.htm*> (accessed Jun. 15, 2005).

• Permits unlimited transfers between leadership PACs and national party committees.

Under current law, a candidate's authorized campaign committee may make unlimited transfers to a national party committee, but a candidate's leadership PAC may not. There is no reason for this disparate treatment. Thus, this provision puts leadership PACs at parity with authorized campaign committees.

Section 7.—Increase in Threshold of Contributions and Expenditures Required for Determining Treatment as Political Committee.

• Raises the political committee registration threshold to $10,000.

This provision protects small political organizations from the requirement of registering and reporting with the FEC. Under current law, if a group raises or spends a mere $1,000 in connection with a federal election, it has to register with the FEC as a political committee. This $1,000 threshold has been in place since 1974 and, thus, needs to be updated to account for inflation.

Section 8.—Prohibiting Contributions and Donations to Section 527 Organizations by Foreign Nationals.

• Prohibits foreign nationals from making contributions to 527 groups.

This provision strengthens the foreign money ban in 2 U.S.C. § 441e by explicitly prohibiting foreign nationals from making contributions to 527 organizations. Neither the Federal Election Campaign Act nor the Internal Revenue Code specifically bars foreign nationals from donating to 527 groups. This provision corrects that omission.

Section 9.—Requiring Section 527 Organizations to Submit Reports under Federal Election Campaign Act of 1971.

• Requires 527 groups to file reports with the FEC in the same manner, under the same terms and conditions, and at the same times applicable to federal political committees.

Section 10.—Permitting Expenditures for Electioneering Communications by Certain Organizations.

• Permits incorporated 501(c)(4), (c)(5) [labor organizations], and (c)(6) [trade associations] to engage in electioneering communications provided such communications are paid for with funds donated by individual American citizens.

This provision repeals the Wellstone Amendment, which restricted electioneering communications by incorporated grassroots organizations. The Wellstone Amendment, which was not included in the original version of BCRA and which Senators McCain and Feingold voted against, prohibited incorporated 501(c) organizations from engaging in electioneering communications on equal terms with 527 groups. This provision ends this unfair treatment by permitting incorporated 501(c) organizations to make electioneering communications so long as they are funded by contributions from individuals.

Section 11.—Expanding Ability of Corporations and Labor Organizations to Communicate with Members.

• Allows corporate and labor union PACs to solicit their "restricted classes" using fax machines or e-mail.

• Removes the "prior approval" restriction on solicitations by trade association PACs.

- Permits more than one trade association to solicit the restricted class of a member company.

Under current law, trade associations may not solicit contributions from the administrative personnel and stockholders of a member company without prior written approval from the company, and a member company may only grant approval to one trade association. This provision removes this unnecessary and burdensome restriction.

Moreover, current law permits corporations and labor unions to solicit their rank-and-file employees twice a year but only by mail. This provision updates the law to allow the use of other common delivery methods (such as e-mail or fax).

Section 12.—Permitting State and Local Parties to Use Nonfederal Funds for Voter Registration and Sample Ballots.

- Permits state and local parties to use nonfederal funds for voter registration activities and the production, printing, and distribution of sample ballots.

BCRA had the unfortunate effect of federalizing many activities that had traditionally been carried out at the state and local level, thus resulting in onerous restrictions being placed on state and local parties. This provision allows state and local parties to use funds permitted under relevant state laws to engage in voter registration activities and to print and distribute sample ballots.

Section 13.—Clarification of Authorization of Federal Candidates and Officeholders to Attend Fundraising Events for State or Local Parties.

- Permits federal officeholders and candidates to attend and participate in state and local party fundraisers without restriction or regulation.

BCRA included language regarding federal officeholders and candidates participating in state and local party fundraisers. This provision clarifies the original intent of that language, which allows federal officeholders and candidates to attend and speak at such fundraisers without restriction or regulation.

Section 14.—Modification of Definition of Public Communication.

- Excludes Internet communications from being considered "public communications."

This provision protects citizens who engage in the nation's political dialogue using Internet web sites and blogs from regulation under the federal campaign finance laws.

Section 15.—Treatment of Candidate Communications Containing Endorsement by Federal Candidate or Officeholder.

- Allows federal officeholders and candidates to endorse state, local, or other federal candidates without such endorsements being considered coordinated communications.
- Permits federal officeholders and candidates to state their positions on state or local ballot initiatives or referenda.

BCRA places unfair and unreasonable restrictions on the ability of federal officeholders to fully participate in elections in their home states and in the communities they represent. This provision allows federal officeholders to endorse state and local candidates without such endorsements being considered coordinated contributions that must be paid for with federal hard dollars. It also permits federal officeholders to declare their positions on state ballot initiatives and to endorse other federal candidates.

Section 16.—Severability.

- If any portion of the Act is found unconstitutional, the other portions will remain in effect.

Section 17.—Effective Date.

- The provisions of the Act shall take effect January 1, 2006.

COMMITTEE CONSIDER OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On March 15, 2005, Mr. Pence and Mr. Wynn introduced H.R. 1316, the "527 Fairness Act of 2005," which was referred to the Committee on House Administration.

HEARINGS

The Committee on House Administration held a hearing on H.R. 1316 on April 20, 2005.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Reynolds, Ms. Miller, Ms. Millender-McDonald, Mr. Brady, and Ms. Lofgren.

Witnesses: The Honorable Christopher Shays, Member of Congress; The Honorable Martin Meehan, Member of Congress; The Honorable Mike Pence, Member of Congress; The Honorable Albert Wynn, Member of Congress; Cleta Mitchell, Partner, Foley & Lardner LLP; Robert Bauer, Partner, Perkins Coie LLP; and Laurence E. Gold, Associate General Counsel, AFL–CIO.

MARKUP

On June 8, 2005, the Committee met to mark up H.R. 1316. The Committee favorably reported H.R. 1316, as amended, by a record vote (6–3), a quorum being present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment in the nature of a substitute

Offered by Mr. Ney. The first vote during the markup came on the amendment in the nature of a substitute offered by Mr. Ney.

The amendment lifts the aggregate election-cycle contribution limit; removes the limit on expenditures coordinated between party committees and candidates; raises the contribution limits for PACs; indexes all contribution limits for inflation; permits unlimited transfers between leadership PACs and national party committees; raises the political committee registration threshold to $10,000; prohibits contributions to 527 groups by foreign nationals; requires 527 groups to report to the FEC; repeals the Wellstone Amendment that restricted electioneering communications by grassroots organizations; expands the ability of corporations and labor unions to communicate with members; allows state and local parties to use nonfederal funds for voter registration activities and sample ballots; clarifies the ability of federal officeholders to attend and par-

ticipate in state and local party fundraisers; amends the Federal Election Campaign Act ("FECA") to exclude Internet communications from being considered "public communications"; allows federal officeholders to endorse state, local, and other federal candidates; and contains a severability clause.

The vote on the amendment was 6–3 and the amendment was agreed to.

Member	Yes	No	Present
Mr. Ney	X	—	—
Mr. Ehlers	X	—	—
Mr. Mica	X	—	—
Mr. Doolittle	X	—	—
Mr. Reynolds	X	—	—
Ms. Miller	X	—	—
Ms. Millender-McDonald	—	X	—
Mr. Brady	—	X	—
Ms. Lofgren	—	X	—
Total	6	3	—

The Committee then voted on H.R. 1316, as amended. The vote on the bill was 6–3 and the bill was agreed to.

Member	Yes	No	Present
Mr. Ney	X	—	—
Mr. Ehlers	X	—	—
Mr. Mica	X	—	—
Mr. Doolittle	X	—	—
Mr. Reynolds	X	—	—
Ms. Miller	X	—	—
Ms. Millender-McDonald	—	X	—
Mr. Brady	—	X	—
Ms. Lofgren	—	X	—
Total	6	3	—

The Committee then voted to favorably report H.R. 1316, as amended. The vote to report favorably was approved by a recorded vote (6–3).

Member	Yes	No	Present
Mr. Ney	X	—	—
Mr. Ehlers	X	—	—
Mr. Mica	X	—	—
Mr. Doolittle	X	—	—
Mr. Reynolds	X	—	—
Ms. Miller	X	—	—
Ms. Millender-McDonald	—	X	—
Mr. Brady	—	X	—
Ms. Lofgren	—	X	—
Total	6	3	—

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 1316 is to restore fairness and balance to the federal campaign finance system.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 1316 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2005.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1316, the 527 Fairness Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Paige Piper/Bach (for the private-sector impact).

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1316—527 Fairness Act of 2005

Summary: H.R. 1316 would make several amendments to the Federal Election Campaign Act of 1971. In particular the bill would:

- Require certain political organizations, as defined by section 527 of the Internal Revenue Code, to file reports with the Federal Election Commission (FEC);
- Repeal the aggregate limit on campaign contributions by individuals;
- Raise the limits on transfers between certain political action committees and national party committees;
- Remove spending limits on national political parties;
- Increase limits on contributions to political action committees and index the limits to inflation; and
- Exempt Internet communications from campaign finance rules.

CBO estimates that implementing H.R. 1316 would cost about $1 million in fiscal year 2006, subject to the availability of appropriated funds. In future years, we estimate that the increased costs would not be significant. Enacting the bill also could affect federal revenues by increasing collections of fines and penalties for violating campaign finance laws, but CBO estimates that any such increase would not be significant.

H.R. 1316 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments because the bill would specifically exclude state and local elections. H.R. 1316 would impose a private-sector mandate as defined in UMRA on certain political organizations. CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1316 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Estimated Authorization Level	1	*	*	*	*
Estimated Outlays	1	*	*	*	*

[1] Enacting the bill could also increase revenues, but CBO estimates any such effects would be less than $500,000 a year.
Note.—* = less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2006 and that spending will follow historical patterns for similar programs.

Based on information from the FEC and subject to the availability of appropriated funds, CBO estimates that implementing H.R. 1316 would cost the FEC about $1 million in fiscal year 2006. This cost covers the one-time computer-related expenses as well as writing new regulations to implement the new provisions of the legislation. In future years, the legislation would increase general

administrative and maintenance costs to the FEC, but we estimate that those additional costs would not be significant.

Enacting H.R. 1316 would likely increase collections of fines and penalties for violations of campaign finance law. Such collections are recorded in the budget as revenues. CBO estimates that the additional collections of penalties and fines would not be significant.

Estimated impact on State, local, and tribal governments: H.R. 1316 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 1316 would impose a private-sector mandate as defined in UMRA on certain political organizations. CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

The bill would require certain organizations registered under section 527 of the Internal Revenue Code that are filing financial reports with the Internal Revenue Service to file periodic reports with the FEC as well. Based on information from government sources, the direct cost of complying with the mandate would be minimal.

Estimate prepared by: Federal Costs: Matthew Pickford. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private-Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

* * * * * * *

TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

DEFINITIONS

SEC. 301. When used in this Act:

(1) * * *

* * * * * * *

(4) The term "political committee" means—

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of [$1,000] *$10,000* during a calendar year or which makes expenditures aggregating in excess of [$1,000] *$10,000* during a calendar year; or

* * * * * * *

(C) any local committee of a political party which receives contributions aggregating in excess of [$5,000] *$10,000* during a calendar year, or makes payments exempted from the defini-

tion of contribution or expenditure as defined in section 301 (8) and (9) aggregating in excess of [$5,000] *$10,000* during a calendar year, or makes contributions aggregating in excess of [$1,000] *$10,000* during a calendar year or makes expenditures aggregating in excess of [$1,000] *$10,000* during a calendar year.

* * * * * * *

(20) FEDERAL ELECTION ACTIVITY.—

(A) IN GENERAL.—The term "Federal election activity" means—

[(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;]

[(ii)] *(i)* voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

[(iii)] *(ii)* a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

[(iv)] *(iii)* services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(B) EXCLUDED ACTIVITY.—The term "Federal election activity" does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) [or (ii)];

* * * * * * *

(iii) the costs of a State, district, or local political convention; [and]

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office[.]*;*

(v) voter registration activities; and

(vi) the costs incurred with the preparation of a sample ballot for an election in which a candidate for Fed-

eral office and a candidate for State or local office appears on the ballot.

* * * * * * *

(22) PUBLIC COMMUNICATION.—The term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. *Such term shall not include communications over the Internet.*

* * * * * * *

REPORTS

SEC. 304. (a)(1) * * *

* * * * * * *

(13)(A) Except as provided in subparagraph (B), each organization described in section 527 of the Internal Revenue Code of 1986 shall submit a report under this section in the same manner, under the same terms and conditions, and at the same times applicable to a political committee which is not an authorized committee of a candidate or a national committee of a political party.

(B) Subparagraph (A) does not apply to an organization described in section 527(j)(5)(B) of the Internal Revenue Code of 1986 (relating to a State or local committee of a political party or political committee of a State or local candidate).

* * * * * * *

(f) DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.—

(1) * * *

* * * * * * *

(3) ELECTIONEERING COMMUNICATION.—For purposes of this subsection—

(A) * * *

(B) EXCEPTIONS.—The term "electioneering communication" does not include—

(i) * * *

* * * * * * *

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in **[**section 301(20)(A)(iii)**]** *section 301(20)(A)(ii)*.

* * * * * * *

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

SEC. 315. (a)(1) Except as provided in subsection (i) and section 315A, no person shall make contributions—

(A) * * *

* * * * * * *

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed [$5,000] *$7,500*; or

* * * * * * *

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed [$5,000] *$7,500*;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed [$15,000] *$25,000*; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed [$5,000] *$7,500*.

[(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than—

[(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

[(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.]

(4)*(A)* The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 303 for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(B) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between a leadership committee of an individual holding Federal office and political committees established and maintained by a national political party. For purposes of the previous sentence, the term "leadership committee" means, with respect to an individual holding Federal office, an unauthorized political committee which is associated with such individual but which is not affiliated with any authorized committee of such individual.

* * * * * * *

(7) For purposes of this subsection—

(A) * * *

* * * * * * *

(C) if—

(i) * * *

(ii) *subject to paragraph (9),* such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

* * * * * * *

(9)(A) For purposes of paragraph (7)(C), a disbursement for an electioneering communication which refers to a candidate for Federal office shall not be treated as a disbursement which is coordinated with such candidate solely on the ground that the communication contains a State or local endorsement or (in the case of a communication containing a State or local endorsement) that the candidate reviewed, approved, or otherwise participated in the preparation and dissemination of the communication.

(B) In subparagraph (A), the term "State or local endorsement" means, with respect to a candidate for Federal office—

(i) an endorsement by such candidate of a candidate for State or local office or of another candidate for Federal office; or

(ii) a statement of the position of such candidate on a State or local ballot initiative or referendum.

* * * * * * *

(c)(1)(A) * * *

[(B) Except as provided in subparagraph (C), in any calendar year after 2002—

[(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

[(ii) each amount so increased shall remain in effect for the calendar year; and

[(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.**]**

(B) Except as provided in subparagraph (C)—

(i) in any calendar year after 2002—

(I) a limitation established by subsection (a)(1)(A), (a)(1)(B), (b), or (h) shall be increased by the percent difference under subparagraph (A),

(II) each amount so increased shall remain in effect for the calendar year, and

(III) if any amount after the adjustment made under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100; and

(ii) in any calendar year after 2006—

(I) a limitation established by subsection (a)(1)(C), (a)(1)(D), or (a)(2) shall be increased by the percent difference under subparagraph (A),

(II) each amount so increased shall remain in effect for the calendar year, and

(III) if any amount after the adjustment made under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under **[**subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h)**]** *subsections (a) and (h)*, increases shall only be made in odd-numbered years and such increases shall re-

main in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) * * *

(B) the term "base period" means—

(i) for purposes of [subsections (b) and (d)] *subsection (b)*, calendar year 1974; [and]

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), [(a)(3),] and (h), calendar year 2001[.]*; and*

(iii) for purposes of subsections (a)(1)(C), (a)(1)(D), and (a)(2), calendar year 2005.

(d)[(1)] Notwithstanding any other provision of law with respect to limitations on [expenditures or limitations on] *amounts of expenditures or* contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for [Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection] *Federal office in any amount*.

[(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

[(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

[(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

[(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

[(ii) $20,000; and

[(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

[(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.—

[(A) IN GENERAL.—On or after the date on which a political party nominates a candidate, no committee of the political party may make—

[(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle; or

[(ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

[(B) APPLICATION.—For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

[(C) TRANSFERS.—A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.]

* * * * * * *

(i) INCREASED LIMIT TO ALLOW RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.—

(1) INCREASE.—

(A) * * *

* * * * * * *

(C) INCREASED LIMIT.—Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over—

[(i) 2 times the threshold amount, but not over 4 times that amount—

[(I) the increased limit shall be 3 times the applicable limit; and

[(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

[(ii) 4 times the threshold amount, but not over 10 times that amount—

[(I) the increased limit shall be 6 times the applicable limit; and

[(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

[(iii) 10 times the threshold amount—

[(I) the increased limit shall be 6 times the applicable limit;

[(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with

respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

[(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.]

(i) 2 times the threshold amount, but not over 4 times that amount, the increased limit shall be 3 times the applicable limit;

(ii) 4 times the threshold amount, but not over 10 times that amount, the increased limit shall be 6 times the applicable limit; and

(iii) 10 times the threshold amount, the increased limit shall be 6 times the applicable limit.

* * * * * * *

(2) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.—

(A) IN GENERAL.—Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution[, and a party committee shall not make any expenditure,] under the increased limit under paragraph (1)—

(i) * * *

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted [and party expenditures previously made] under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.—A candidate and a candidate's authorized committee shall not accept any contribution [and a party shall not make any expenditure] under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

* * * * * * *

MODIFICATION OF CERTAIN LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO PERSONAL FUND EXPENDITURES OF OPPONENTS

SEC. 315A. (a) AVAILABILITY OF INCREASED LIMIT.—

(1) IN GENERAL.—Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress [exceeds $350,000—

[(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

[(B) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

[(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.] *exceeds $350,000, the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled.*

* * * * * * *

(3) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.—

(A) IN GENERAL.—Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution[, and a party committee shall not make any expenditure,] under the increased limit under paragraph (1)—

(i) * * *

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted [and party expenditures previously made] under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.—A candidate and a candidate's authorized committee shall not accept any contribution [and a party shall not make any expenditure] under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

* * * * * * *

CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, OR LABOR ORGANIZATIONS

SEC. 316. (a) * * *

(b)(1) * * *

* * * * * * *

(4)(A) * * *

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made [only by mail addressed] *only by communications addressed or otherwise delivered* to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

* * * * * * *

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade associa-

tion and the families of such stockholders or personnel [to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year].

* * * * * * *

(c) RULES RELATING TO ELECTIONEERING COMMUNICATIONS.—

(1) * * *

(2) EXCEPTION.—Notwithstanding paragraph (1), the term "applicable electioneering communication" does not include a communication by a [section 501(c)(4) organization] *section 501(c)(4), (5), or (6) organization* or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))). For purposes of the preceding sentence, the term "provided directly by individuals" does not include funds the source of which is an entity described in subsection (a) of this section.

(3) SPECIAL OPERATING RULES.—

(A) * * *

(B) EXCEPTION UNDER PARAGRAPH (2).—A [section 501(c)(4) organization] *section 501(c)(4), (5), or (6) organization* that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

(4) DEFINITIONS AND RULES.—For purposes of this subsection—

(A) the term "[section 501(c)(4) organization] *section 501(c)(4), (5), or (6) organization*" means—

(i) an organization described in [section 501(c)(4) of the Internal Revenue Code of 1986] *paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986* and exempt from taxation under section 501(a) of such Code; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

* * * * * * *

(5) COORDINATION WITH INTERNAL REVENUE CODE.—Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code[.], *or to affect the treatment under such Code of any expenditures described in section 527(e) of*

such Code which are made by a section 501(c)(4), (5), or (6) organization.

[(6) SPECIAL RULES FOR TARGETED COMMUNICATIONS.—

[(A) EXCEPTION DOES NOT APPLY.—Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

[(B) TARGETED COMMUNICATION.—For purposes of subparagraph (A), the term "targeted communication" means an electioneering communication (as defined in section 304(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

[(C) DEFINITION.—For purposes of this paragraph, a communication is "targeted to the relevant electorate" if it meets the requirements described in section 304(f)(3)(C).]

* * * * * * *

CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS

SEC. 319. (a) PROHIBITION.—It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) * * *

(B) a contribution or donation to a committee of a political party; [or]

(C) a contribution or donation to an organization described in section 527 of the Internal Revenue Code of 1986; or

[(C)] *(D)* an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph [(A) or (B)] *(A), (B), or (C)* of paragraph (1) from a foreign national.

* * * * * * *

SEC. 323. SOFT MONEY OF POLITICAL PARTIES.

(a) * * *

(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

(1) * * *

(2) APPLICABILITY.—

(A) IN GENERAL.—Notwithstanding clause (i) [or (ii)] of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts—

(i) * * *

* * * * * * *

(e) FEDERAL CANDIDATES.—

(1) * * *

* * * * * * *

(3) FUNDRAISING EVENTS.—Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, [speak,] *speak without restriction or regulation,* or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

(4) PERMITTING CERTAIN SOLICITATIONS.—

(A) GENERAL SOLICITATIONS.—Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in [clauses (i) and (ii)] *clause (i)* of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

(B) CERTAIN SPECIFIC SOLICITATIONS.—In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in [clauses (i) and (ii)] *clause (i)* of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if—

(i) * * *

* * * * * * *

(f) STATE CANDIDATES.—

(1) IN GENERAL.—A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section [301(20)(A)(iii)] *301(20)(A)(ii)* unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

* * * * * * *

APPENDIX A

[From the Washington Post, Nov. 11, 2003]

SOROS'S DEEP POCKETS VS. BUSH; FINANCIER CONTRIBUTES $5 MILLION MORE IN EFFORT TO OUST PRESIDENT

(By Laura Blumenfeld)

NEW YORK.—George Soros, one of the world's richest men, has given away nearly $5 billion to promote democracy in the former Soviet bloc, Africa and Asia. Now he has a new project: defeating President Bush.

"It is the central focus of my life," Soros said, his blue eyes settled on an unseen target. The 2004 presidential race, he said in an interview, is "a matter of life and death."

Soros, who has financed efforts to promote open societies in more than 50 countries around the world, is bringing the fight home, he said. On Monday, he and a partner committed up to $5 million to MoveOn.org, a liberal activist group, bringing to $15.5 million the total of his personal contributions to oust Bush.

Overnight, Soros, 74, has become the major financial player of the left. He has elicited cries of foul play from the right. And with a tight nod, he pledged: "If necessary, I would give more money."

"America, under Bush, is a danger to the world," Soros said. Then he smiled: "And I'm willing to put my money where my mouth is."

Soros believes that a "supremacist ideology" guides this White House. He hears echoes in its rhetoric of his childhood in occupied Hungary. "When I hear Bush say, 'You're either with us or against us,' it reminds me of the Germans." It conjures up memories, he said, of Nazi slogans on the walls, Der Feind Hort mit ("The enemy is listening"). "My experiences under Nazi and Soviet rule have sensitized me," he said in a soft Hungarian accent.

Soros's contributions are filling a gap in Democratic Party finances that opened after the restrictions in the 2002 McCain-Feingold law took effect. In the past, political parties paid a large share of television and get-out-the-vote costs with unregulated "soft money" contributions from corporations, unions and rich individuals. The parties are now barred from accepting such money. But non-party groups in both camps are stepping in, accepting soft money and taking over voter mobilization.

"It's incredibly ironic that George Soros is trying to create a more open society by using an unregulated, under-the-radar-screen, shadowy, soft-money group to do it," Republican National Committee spokeswoman Christine Iverson said. "George Soros has purchased the Democratic Party."

In past election cycles, Soros contributed relatively modest sums. In 2000, his aide said, he gave $122,000, mostly to Democratic causes and candidates. But recently, Soros has grown alarmed at the influence of neoconservatives, whom he calls "a bunch of extremists guided by a crude form of social Darwinism."

Neoconservatives, Soros said, are exploiting the terrorist attacks of Sept. 11, 2001, to promote a preexisting agenda of preemptive war and world dominion. "Bush feels that on September 11th he was anointed by God," Soros said. "He's leading the U.S. and the world toward a vicious circle of escalating violence."

Soros said he had been waking at 3 a.m., his thoughts shaking him "like an alarm clock." Sitting in his robe, he wrote his ideas down, longhand, on a stack of pads. In January, Public Affairs will publish them as a book, "The Bubble of American Supremacy" (an excerpt appears in December's Atlantic Monthly). In it, he argues for a collective approach to security, increased foreign aid and "preventive action."

"It would be too immodest for a private person to set himself up against the president," he said. "But it is, in fact"—he chuckled—"the Soros Doctorine."

His campaign began last summer with the help of Morton H. Halperin, a liberal think tank veteran. Soros invited Democratic strategists to his house in Southampton, Long Island, including Clinton chief of staff John D. Podesta, Jeremy Rosner, Robert Boorstin and Carl Pope.

They discussed the coming election. Standing on the back deck, the evening sun angling into their eyes, Soros took aside Steve Rosenthal, CEO of the liberal activist group America Coming Together (ACT), and Ellen Malcolm, its president. They were proposing to mobilize voters in 17 battleground states. Soros told them he would give ACT $10 million.

Asked about his moment in the sun, Rosenthal deadpanned: "We were disappointed. We thought a guy like George Soros could do more." Then he laughed. "No, kidding! It was thrilling."

Malcolm: "It was like getting his Good Housekeeping Seal of Approval."

"They were ready to kiss me," Soros quipped.

Before coffee the next morning, his friend Peter Lewis, chairman of the Progressive Corp., had pledged $10 million to ACT. Rob Glaser, founder and CEO of RealNetworks, promised $2 million. Rob McKay, president of the McKay Family Foundation, gave $1 million and benefactors Lewis and Dorothy Cullman committed $500,000.

Soros also promised up to $3 million to Podesta's new think tank, the Center for American Progress.

Soros will continue to recruit wealthy donors for his campaign. Having put a lot of money into the war of ideas around the world, he has learned that "money buys talent; you can advocate more effectively."

At his home in Westchester, N.Y., he raised $115,000 for Democratic presidential candidate Howard Dean. He also supports Democratic presidential contenders Sen. John F. Kerry (Mass.), retired Gen. Wesley K. Clark and Rep. Richard A. Gephardt (Mo.).

In an effort to limit Soros's influence, the RNC sent a letter to Dean Monday, asking him to request that ACT and similar organizations follow the McCain-Feingold restrictions limiting individual contributions to $2,000.

The RNC is not the only group irked by Soros. Fred Wertheimer, president of Democracy 21, which promotes changes in campaign finance, has benefited from Soros's grants over the years. Soros has backed altering campaign finance, an aide said, donating close to $18 million over the past seven years.

"There's some irony, given the supporting role he played in helping to end the soft money system," Wertheimer said. "I'm sorry that Mr. Soros has decided to put so much money into a political effort to defeat a candidate. We will be watchdogging him closely."

An aide said Soros welcomes the scrutiny. Soros has become as rich as he has, the aide said, because he has a preternatural instinct for a good deal.

Asked whether he would trade his $7 billion fortune to unseat Bush, Soros opened his mouth. Then he closed it. The proposal hung in the air: Would he become poor to beat Bush?

He said, "If someone guaranteed it."

APPENDIX B

[From the New York Times; Jul. 29, 2004]

A DELEGATE, A FUND-RAISER, AND A VERY FINE LINE

(By Jim Rutenberg and Glen Justice)

BOSTON.—Harold M. Ickes is a founder of an organization created to help defeat President Bush this fall, a group that he emphasizes operates wholly independently of the campaign of Senator John Kerry and the Democratic National Committee.

But that has not stopped him from courting some of the Democrats' wealthiest donors here at the Four Seasons, a nexus of party operatives, Kerry campaign officials and friendly celebrities gathered for the party's convention this week. In a luxurious suite where guests nibble on chocolate ganache tarts and sip espresso, he asks them to give and give more.

Then, in the evenings, this onetime White House deputy chief of staff throws on his credentials as a Democratic Party superdelegate and joins party functionaries gathered for the Democratic convention at the FleetCenter as one of their own.

Just how precisely this squares with the new campaign finance law that allows such groups, known as 527 organizations, to raise unlimited sums for politics so long as they do not coordinate with the candidates or the national parties depends on how much one takes Mr. Ickes's word about the distance between him and the Democrats.

Advocates for stronger fund-raising regulation say that Mr. Ickes's four-star road show provides the most vivid example yet of how he and leaders of groups like his have all year been flouting the new fund-raising laws, drafted to stanch the flow of unlimited donations to parties and candidates.

But Mr. Ickes and his colleagues say they are well within the boundaries of the law, and they are unapologetic. They say they are in no way coordinating their activities with the many party and campaign officials with whom they are rubbing elbows so frequently here this week, simply legally fishing for dollars in a fully stocked pond.

"We are here talking to donors," said Mr. Ickes, who was known for his command of fund-raising details and the fund-raising law back when he worked for President Bill Clinton.

"We can talk to them anywhere—and we find this is a very efficient, effective place to talk to them," Mr. Ickes said.

Erik Smith, head of the group Mr. Ickes founded, The Media Fund, put it more starkly: "To quote Willie Sutton, 'You rob banks because that's where the money is.'"

When the new campaign finance law was debated in Congress its supporters argued that it would cut the tie between big money contributors and lawmakers. Its opponents countered that it would drive that money away from the national parties and into other, more opaque, affiliated groups that would operate like shadow political parties.

The scene at the Four Seasons this week has shown just how close to the line of independence groups like The Media Fund—which has been running advertisements against President Bush since March—can come.

Just down the hallway from Mr. Ickes's second-floor suite in the Wendell Phillips Room is the registration office in the Winthrop Room, where fund-raisers pick up their special-access passes. As Mr. Ickes mingled with passers-by outside of his suite Wednesday afternoon, a parade of campaign and party officials walked by, including Bob Shrum, Mr. Kerry's chief strategist. Mr. Shrum and Mr. Ickes have worked on campaigns together like the David N. Dinkins New York mayoral campaigns of 1989 and 1993.

Mr. Smith was also right near longtime comrades-in-arms. While Mr. Smith sat at a table in the Four Seasons lounge speaking with a reporter on Tuesday, Steve Elmendorf, Mr. Kerry's deputy campaign manager, who is staying at a nearby hotel, passed by the window. Mr. Elmendorf was a senior adviser for the presidential campaign of Representative Richard A. Gephardt of Missouri last fall when Mr. Smith was its press secretary.

The proximity is hardly by chance. The hotel is not just the base of operation for Mr. Smith, Mr. Ickes and yet another group for which Mr. Ickes is raising money, America Coming Together, but has also become a salon for top fund-raisers in the Kerry campaign and the Democratic Party.

Mr. Ickes's hospitality suite, just up a sweeping staircase from the hotel lounge, is open to all—all, that is, but the news media. On Tuesday a reporter who was barred at the door spied Bill Press, the liberal former co-host of "CNN Crossfire," mingling with visitors and signing copies of his book, "Why Bush Must Go: Top 10 Reasons Why George Bush Doesn't Deserve a Second Term." ("I was glad to do it, they bought the books and gave them out to donors," he said.) On Wednesday, Donna Brazile, the campaign manager for Al Gore in 2000, did the same, with her own book.

"People are coming in and we are grabbing them in the halls," said Ellen Malcolm, president of America Coming Together, who said she had met with more than 100 supporters at the hotel.

But the intermingling of the avowed independent groups and Democratic officials is not restricted to the Four Seasons here. Environment 2004, an organization that runs a 527 committee held a reception to thank donors on Monday at the Beacon Hill home of Cathy Douglas Stone, a Boston environmental activist. Among those who spoke were the columnist Arianna Huffington, the singer Carole King and Senator Maria Cantwell of Washington.

On Monday Ms. Malcolm was on hand at an event honoring Representative Nancy Pelosi of California, the House minority leader, that drew dozens of lawmakers and major donors together to drink lemonade and iced tea in a garden atrium of the Isabella Stewart

Gardner museum. Later that night, Ms. Malcolm, like Mr. Ickes, was on the convention floor.

And Mr. Ickes is not the only official of a 527 group with delegate status. Simon Rosenberg, head of the New Democrat Network, a group running Spanish-language advertisements against Mr. Bush since March, said he sits on the convention's platform committee.

It is all too much for campaign finance regulation advocates who pushed for the new rules and are here this week, too, to take it all in. "They're supposed to be independent groups operating independently of the Democratic Party and the Kerry presidential campaign," said Fred Wertheimer, president of Democracy 21, a group which advocated for the new law. "Instead, they're going out of their way to brazenly and blatantly demonstrate that they are intertwined with the Democratic Party and the Democratic nominating convention."

Mr. Ickes replies that while he interacts with his old friends in Mr. Kerry's campaign, "I talk to them, but I don't talk to them about their spending, they don't talk to me about our spending." He said, "We are very arm's length—not Chinese wall, but brick wall." He added of his role as a delegate to the Democratic National Committee, that it is a position he is allowed to hold under campaign finance regulations.

He has particularly drawn the ire of Mr. Wertheimer, who has filed complaints against the groups he is fund-raising for with the Federal Election Commission, complaints that are pending. The Media Fund has been credited with playing a crucial role in helping to beat back an advertising barrage that President Bush launched against Mr. Kerry when he emerged the winner of the Democratic primary season—and nearly broke. It has spent $28 million on advertisements against Mr. Bush in key states.

With Mr. Kerry announcing that he will not run advertisements in August to save money for the fall, The Media Fund announced that it, in turn, would increase its advertising next month—another example, critics say, of how closely its strategy is tied to that of Mr. Kerry's campaign.

Ms. Malcolm said she was downright angered by implications that she was doing anything untoward. "It makes me mad and it personally offends me that people are implying that we are doing something wrong," she said. "All we're trying to do is comply with the law."

Mr. Wertheimer said that at the very least, she and her colleagues should do a better job looking as if they were. "The perception here is there's a marriage taking place," he said.

APPENDIX C

COMMENTS OF MARK BREWER, PRESIDENT, ASSOCIATION OF STATE DEMOCRATIC CHAIRS

ON PROPOSED REGULATIONS DEFINING FEDERAL ELECTION ACTIVITY AND ON THE PROPOSED REGULATION GOVERNING ALLOCATION OF SALARIES BY STATE AND LOCAL PARTY COMMITTEES

On behalf of the Association of State Democratic Chairs, I am submitting comments on the proposed revision of the definition of federal election activity and on the treatment of certain salaries and wages paid by state, district and local party committees. Because these two rulemakings are related and will have substantial impact on operation of political parties at the state and local level, I have combined my comments into one document that I will file separately in each proceeding.

The Commission initiated these rulemakings in response to United States District Court's decision in *Shays* v. *Federal Election Commission.* The District Court in overturning the Commission's regulation faulted the Commission for various shortcomings in the rulemaking process including failing to provide sufficient notice of the alternatives being considered, to explain the Commission's choice of rules and to demonstrate why the promulgated rules were consistent with the legislative objectives of Bipartisan Campaign Reform Act (BCRA). Each of these failings, should the appeals court agree that they were failings, is understandable given the compressed time period in which the Commission was required to act, the statute's use of vague undefined terms and the paucity of legislative history on critical aspects of the law. These procedural weaknesses in the promulgation of the Commission rules should not be considered as proof of substantive flaws in the rules themselves.

In fact, the regulations that are now subject to Commission reconsideration are for the most part not only reasonable but in many instances to be preferred to alternatives that the Commission is now considering. The existing rules are easier to understand and take into account the daily practicalities of running a state or local committee. State and local party committees operate in a very complex regulatory environment. No other political committees are asked to manage such Byzantine rules. The proposed alternatives suggested in these rulemakings would impose even more complexity on state and local parties. The consequence of adopting some of these alternatives would be to push to the breaking point the ability of many party committees to comply.

An unfortunate consequence of BCRA is that many state and local party committees are avoiding participating in grassroots po-

litical activity because federa1 law poses compliance challenges that are beyond their ability to meet. If the Commission doubts that this is the case, it need only review how many federal reporting party committees received and spent Levin funds. Levin funds were intended to allow state and local parties to use nonfederal funds to finance grassroots activity. The fact that very few committees took advantage of Levin funds is testament to the fact that the rules were just too complex for state and local parties to comply. If these committees were able to marshal sufficient federal funds to pay for voter registration, voter identification and get-out-the-vote programs, this consequence of BCRA would be less regrettable. However, this was not the case, particularly at the local level and in states that were not Presidential targets. Instead of running the risk of violating federal law, many committees simply did not engage in federal election activity.

Changing the rules as suggested in these rulemakings will only compound the problem. The thrust of the proposed rules is to subject more grassroots party activity to federal regulation. Subjecting more party activity to the complex allocation and reporting requirements of federal law will only accelerate the flow of these activities out of the party into less accountable political organizations. The changes proposed proceed from a basic misunderstanding of how local parties now operate.

Local parties operate largely autonomously from the state and national committees. Most local committees are small volunteer centered organizations. These committees do not have nor could they afford the lawyers and accountants that have become necessary to comply with complexity of federal law. A common response to BCRA then was to avoid any activity that would trigger federal reporting obligations. These committees were advised to avoid engaging in voter registration, not to undertake any get-out-the-vote activity and to devote all paid staff to local elections. For most local committees, this was the only available survival strategy. Now some of the Commission's proposals will close off even this avenue. Below the alternatives offered in these rulemakings are explored and their shortcomings noted.

In response to the District Court's concern that limiting the definition of voter registration to assisting voters in the actual act of registering may be too limiting and may "unduly compromise the Act's purposes", the Commission asks whether encouraging someone to register combined with some direction on how one registers should be included in the definition. Expanding the definition in this way would cover a voter calling his local party headquarters and asking where they could register. It would cover placing a stack of voter registration cards at the front desk. Presumably it would cover a party website where registration materials are available. Local committees that no longer register voters because they cannot practically comply with BCRA will be reduced to silence when a voter asks how or where to register. The practical consequence of expanding the definition of voter registration will be to mute core political speech.

The Commission also seeks comments on whether it should reconsider the definition of get-out-the-vote activity. The Commission notes that Congress did not provide a definition. The District Court

correctly pointed out that the list of get-out-the-vote activity is not exhaustive and questioned what additional activity might be included. In response to the Court's decision, the Commission should make the list exhaustive. State and local party committees and groups of state and local candidates that are governed by this regulation are entitled to a clear and full statement of the governing rule.

This regulation substantially impacts the right of state and local candidates to associate in their election efforts. In providing a list of covered activities the Commission should keep the list narrow. A broad reading of what constitutes get-out-the-vote activity will severely impair the ability of local candidates to join in common effort to effect a shared political outcome. For local party committees a broad reading will shrink even further the political playing field. Without additional Congressional direction, the Commission should be chary of extending its jurisdiction over a broader swath of local candidate activity. The fact that the Commission has yet to provide state and local candidates with sufficient instruction and tools to comply with the existing regulation underscores the folly of expanding the range of covered activity.

Again in response to the District Court's decision, the Commission proposes to redefine "voter identification". The proposed definition covers the acquisition "of information about potential voters including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or adding information about the voter's likelihood of voting in an upcoming election or their likelihood of voting for specific candidates." This definition proceeds from a basic misunderstanding of how modern political parties operate. Political committees maintain or purchase access to large databases of people living in the United States. These databases are constantly sorted using various demographic, economic and personal criteria. New information is regularly appended or employed depending on the purpose that the database is being used.

Because nearly every resident of the country is a potential voter, the proposed regulation would cover any and all uses of a party database. These databases are employed in fundraising, persuasion, volunteer recruitment and for a host of other purposes beyond get-out-the-activity. On the other hand, the term "voter identification" in the general political lexicon is used to refer to those activities, most commonly canvassing, that are undertaken in close proximity to the election to identify specific voters to target in a "get-out-the-vote" effort. Although not defined in BCRA, this is how the statute appears to use the term. The statute defines federal election activity to include "(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot". Clearly the term is used in a restricted manner. It is addressed to activity tied directly to a Federal election and similar to or connected with the other activities cited. There is no statutory justification for giving a broader sweep to the term. There is no reason to expand the definition to cover all uses or additions to a database.

The Association commends the Commission for proposing to rededefine the definition of "in connection with an election in which

a candidate for federal office appears on the ballot." The new definition recognizes that state and local committees spend much and in some cases all their time and money on local elections. In many states, years can pass between true federal contests. The focus of local parties is most often on municipal elections. The proposed regulation recognizes this fact and seeks to limit the federalization of state and local party activity that is directed at municipal elections. The Association urges its adoption.

Lastly the Commission proposes revising the rule governing the allocation of salaries and wages by requiring state and local committees to allocate at least 25% of these costs to a Federal account whenever an employee engages in any Federal election activity or activity in connection with a Federal election. As explained above, most local committees are focused on state and local elections. These committees do not register with the Commission and do not maintain Federal and state accounts. They take care to avoid being subject to the recordkeeping, registration, reporting and allocation requirements of Federal law. The proposed regulation imposes these Federal obligations even where the Federal election activity is minimal. For example, the allocation requirement would be triggered if a staffer for a local committee in a college town spent a single day on campus registering students to vote. It is not enough that to be told that the Commission is unlikely to pursue such a violation. Party committees are not in the business of instructing their employees to disrespect the law because the committee is likely to escape punishment for violating the law.

The District Court expressed concern that the current regulation opens an opportunity for gross abuse is mere speculation without any support in the legislative or administrative record. First, state and local committees simply do not employ sufficient numbers of staff to cleverly assign them monthly duties to assure that each stays below the 25% threshold. Second, where there is a highly contested Federal election in which a state or local committee is participating, the committee staff assigned to work on that race will devote more than 25% of their time to that race and therefore, will be 100% allocated to the Federal account. The consequence will be over allocation which will more than compensate for any under allocation of other employees. If the Commission needs to be convinced of this fact, it should do a study of state and local committee staffing patterns. It should not proceed to further handicap local parties based on unfounded speculation of undocumented abuse. A review of state and local party activity in the last election will demonstrate that the District Court's concern found no expression in actual party activity.

In closing, the proposed regulations are rooted in a basic misapprehension of the nature of state and local committees. These are not committees flush with resources and staffed with well paid professionals. Rarely is a Federal candidate in a position to control a committee. Federal elections are not their primary focus and as often as not the Federal election receives minimal, if any attention. The Commission can easily confirm these facts. The Commission's regulations should reflect what state and local committees actually do, rather than unfounded fears of wholesale circumvention of the law. Facts rather than wildly imagined corruptive schemes should

guide the Commission. Visit a few local party committees and any fears will be allayed. Add to the complexity of the regulation and there will be fewer to visit.

MINORITY VIEWS OF RANKING MEMBER JUANITA MILLENDER-McDONALD, REPRESENTATIVE ROBERT A. BRADY, AND REPRESENTATIVE ZOE LOFGREN

The House Administration Committee ordered H.R. 1316 reported on a 6–3 vote. In our view, H.R. 1316 as a whole is not needed and does not accomplish the objectives that the Majority purports are needed to level the playing field between the major parties and 527 organizations. The bill also would increase the undue influence of a few wealthy individuals by repealing the aggregate limits on contributions. In essence, it rolls back not only the reforms of the Bipartisan Reform Act of 2002 (BCRA), but the Federal Election Campaign Act of 1971 (FECA), as amended in 1974, which placed limits on political contributions to candidates for federal elective office by an individual or a group, which were enacted in the wake of the Watergate scandals.

PREFACE

H.R. 1316, under the pretext of addressing the need to regulate independent political organizations, will enhance the considerable financial advantage already enjoyed by the majority party and incumbent office holders. Some of the bill's provisions do so in such an obvious, flagrant manner that the constitutionality of H.R. 1316 is put into serious doubt. Nowhere is the constitutional defect more obvious than in section 6 of the bill, which allows Federal officeholders, and only Federal officeholders, the right to create special "leadership" committees, which in turn can make unlimited transfers to national party committees. H.R. 1316 denies challengers this new perquisite of incumbency. Even if this defect were remedied by extending the privilege to non-officeholders, it would be an empty gesture because few challengers would be able to take advantage of it.

H.R. 1316 is motivated by fear more than fact. Spending by independent political organizations in 2004 congressional races was a traction of what the Republican Party was able to marshal in response. It is this immense partisan financial advantage that this bill is intended to secure. By removing effectively any limit on what an individual may contribute to a political party, and any limit on how that money can be spent, H.R. 1316 is intended to entrench party power. BCRA imposed soft money limits on parties, while H.R. 1316 removes them. Under H.R. 1316, the only limit on how much an individual may contribute in response to a party's, or a candidate's solicitation, is the creativity of the solicitor. Current law permits individuals to contribute over one hundred thousand dollars in an election cycle. The only people that will benefit from the removal of this limit are multi-millionaires and the party that most caters to them.

It is instructive to note that the 527 activity that this bill appears most concerned about is the voter registration and get-out-the-vote activity that was not directed at particular Congressional candidates but at increasing participation. The supporters of H.R. 1316 may be troubled by this development, but it is far from clear that the public is. With both major political parties raising record sums in 2004, it is hard to discern the unfairness that the H.R. 1316 seeks to correct. Greater participation in elections, and more competitive elections, are not the hallmarks of a problem in need of a remedy. Recent Republican Party fundraising certainly should reassure the supporters of this bill that their party will continue to enjoy a sizable financial advantage, and will be able to come to their financial rescue at the first sign of any vulnerability.

H.R. 1316's drive for "fairness" goes beyond enhancing the huge financial advantage already enjoyed by the party in power, to a concern about the ability of trade associations to circumvent the electioneering communications limitations of BCRA. Apparently the sponsors of H.R. 1316 do not believe that the managers of trade associations have sufficient freedom to employ the considerable resources and ingenuity of their trade associations to influence federal elections. H.R. 1316 removes the BCRA ban on electioneering communications by trade associations, and allows them to use individual membership dues and payments to fiance television and radio advertising attacking or promoting a federal candidate. To assure that trade associations can raise sufficient funds for this and other elections purposes, H.R. 1316 removes long standing restrictions on trade association solicitations. It is easy to see how these changes will play to the great advantage of incumbents and the party in power.

The provisions of H.R. 1316, as a whole, are problematic and inconsistent with BCRA and FECA. We find that this bill has little to do with 527s, but everything to do with allowing the parties to collect more money from a few wealthy contributors. If H.R. 1316 becomes law, it will have the devastating effect of diluting the political voice of people of modest means, while magnifying the influence of wealthy contributors who, without the current restrictions, would be free to direct their wealth to a vast range of interests they support.

This bill is most disturbing because it is such a blatant attempt to advantage incumbents and the majority party. As such, it is an abuse of power and a breach of the people's trust. Below is a more detailed review of this badly defective bill.

PRINCIPAL FLAWS

REPEAL OF AGGREGATE LIMIT ON CONTRIBUTIONS BY INDIVIDUALS

Repealing the aggregate limits on contributions by individuals will allow the wealthy populace to give millions of dollars to candidates and parties. Currently, an individual can give up to $101,400 to all political parties, PAC committees and candidates in a two year Federal election cycle. This amounts to a limit of $40,000 an individual can give to Federal candidates and $61,400 to political parties, and PAC committees. H.R. 1316 would allow an individual to give $160,200 to the three national committees of a

political party, $1 million to the state party committees of that party ($20,000 to each of the 50 state party committees) and $1,827,000 to each of the 435 house races for a particular party; for a total of almost $3 million. Fundamentally, it strips away the protections implemented by the FECA aggregate restrictions, which were put in place as a direct result of the Watergate scandals. We voted for BCRA to break the link between Federal officeholders and candidates, and the undue influence of unregulated money given by wealthy individuals. This provision would re-open the door to individuals giving million-dollar contributions to federal officeholders and candidates for federal elections, in essence opening the "hard money" floodgates and converting "hard money" into "soft money".

REPEAL OF LIMIT ON AMOUNT OF PARTY EXPENDITURES ON BEHALF OF CANDIDATES IN GENERAL ELECTIONS

By removing the caps on coordinated expenditures, H.R. 1316 would allow a national party committee to completely underwrite multi-million dollar campaign(s) against any candidate(s) that it targets. Essentially, this provision would allow a political party to coordinate and spend unlimited amounts to support or defeat a candidate. Should this provision become law, unlimited resources will be put at the disposal of any vulnerable candidate who happens to be a member of the party in power? This legislation should not be passed for partisan gain.

PERMITTING TRANSFERS BETWEEN LEADERSHIP COMMITTEES AND NATIONAL PARTY COMMITTEES

H.R. 1316 would allow any Member of Congress to make unlimited transfers from their leadership PACs to national party committees. That Member of Congress could then control the spending of these transferred funds to support the Member's own campaign. Under current law, Members' leadership PAC funds are not supposed to be spent on the Member's campaign.

Donors could give the maximum contribution allowed for a candidate's campaign and the maximum contribution allowed for a Member's leadership PAC, and all of these funds could end up being spent by the candidate on the candidate's campaign. As noted above, only incumbents enjoy this privilege. Contribution limits long an essential feature of the law are rendered meaningless. Members from noncompetitive districts holding positions of leadership in the House, and on committees, will be able to use their considerable legislative clout to raise, and to place at a vulnerable Member's disposable, almost unlimited funds. Few challengers, whether in a primary or a general election, will enjoy such a rich financial advantage. For them, the "Fairness" referenced in the title of this bill, will be forever elusive.

PERMITTING EXPENDITURES FOR ELECTIONEERING COMMUNICATIONS BY CERTAIN ORGANIZATIONS

H.R. 1316 would undermine a key BCRA restriction to prevent the use of non-federal money, more commonly referred to as "soft money", to fund deceptive issue ads. Under this bill, trade associations would once more be allowed to use unlimited "soft money" do-

nations from individuals to pay for broadcast ads promoting and attacking federal candidates close to an election. Again, it is hard to imagine how this change will do anything other than benefit incumbents and the party in power.

CONCLUSION

The proponents of this legislation are among the strongest opponents of BCRA, and are using public concern over 527's as a pretext for rolling back BCRA and the reforms put in place after the Watergate scandals. Passage of this bill would be a huge step backwards towards the unregulated six and seven figure donations which were common before BCRA became law. BCRA was intended to end this practice, and its perceived effect on the shaping of public policy to the benefit of the wealthy and influencial.

We stand in agreement with a recent letter written by the Democratic leadership stating that limiting total campaign giving has been a cornerstone of fair and honest campaigns for a generation, and one of the most effective ways to prevent corruption and the appearance of corruption in our political process, and in the process of governing and shaping public policy.

Democrats have stood proudly as the party of reform. H.R. 1316 is a direct assault on this principle, and a step backwards into the preception of unseemliness at best, and influence peddling at its worst. Perceptions do matter, and H.R. 1316 should not become law.

JUANITA MILLENDER-MCDONALD.
ROBERT A. BRADY.
ZOE LOFGREN.

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